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Landlord–Tenant Courts in New York City at the Turn of the Twentieth Century

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Introduction

Save for the monthly ritual of paying rent, landlords and tenants in late nineteenth-century New York City most often met each other during eviction proceedings. Thousands of tenants from immigrant neighbourhoods and tenement house districts were summoned to court each year to learn if their failure to pay rent would lead the judge to order their immediate ouster or give them a few days to pay their rent.[1] Other outcomes were unlikely. Henry Howland, an attorney of the time, provided one picture of the judicial scene:

When court opens, the room is crowded with lawyers, litigants, some of whom plead their own causes, witnesses, and unhappy tenants, and in the lower East-Side districts the experience appeals to more senses than that of sight. In the dispossess cases the woman of the family generally appears, dragging a child by the hand, and carrying a babe in the arms, for sympathetic reasons. Failing offspring of tender age, a child is not infrequently borrowed from a neighbor. 'Mrs. Pasquale,' or 'Mrs. Reilly,' says the judge, 'why don't you pay your rent?' and then interrupts the eloquent flow in answer to so intricate a question by saying, 'I'll give you until Monday, or the marshal will put you out.'[2]

[1] According to William McLoughlin, in 'Evictions in New York's Tenement Houses', *Arena*, 7 (1892), 48–57, 5,450 dispossess warrants issued from the district covering the Lower East Side between Oct. 1891 and Sept. 1892. This number is almost surely much smaller than the number of cases actually filed. A significant number of the disputes were probably resolved before the warrant stage. Another 6,100 warrants were issued from the court in a neighbouring district; 29,720 came from all the landlord–tenant courts in New York City. If each evicted family had five people—a quite conservative estimate—about 150,000 people were ordered out of their homes in the 1891–2 period.

[2] Henry E. Howland, 'The Practice of the Law in New York', *Century Magazine*, 62 (1901), 803–25. The presence of women may not have been merely for sympathy. Fathers,

While Howland evinced little sympathy for the plight of tenants, his little story confirms that tenants failing to pay their rent could only beg for a bit more time to find some cash or another place to live before the constabulary showed them to the door. The quality of the tenant's housing was irrelevant. Broken promises by landlords to make repairs were of no concern. Neither the length of a tenant's stay nor the plight of children was germane. Time to restore financial solvency was not provided. The scope of a commercial tenant's investment in the property was immaterial. The illegality of the tenement apartment building's construction or use was of no moment. Publicly provided housing to take in those ousted from their privately owned apartments did not exist.[3] The streets beckoned.

During the same year Howland's article describing landlord–tenant courts appeared in print, the New York state legislature adopted the Tenement House Act of 1901[4]—the culmination of a major, long-term effort by Progressive reformers to ban the construction of poor-quality apartment buildings.[5] The coexistence of a major Progressive Era housing reform movement and a landlord–tenant court evicting thousands of persons each year from poor-quality tenement houses seems anomalous to this late twentieth-century mind. This essay will tell the story of how such apparently contradictory streams of legal events occurred simultaneously.

The legal part of the tale has three parts. First, some knowledge of nineteenth-century American landlord–tenant law is a

husbands, brothers, or sons may well have been out working for the funds needed to pay the rent. The frequency of borrowed baby appearances is unknown. But if the men in the family were off working, it is hardly surprising that babies would show up in court.

[3] The United States has never had a programme of publicly funded housing construction as broad as those commonly available in Europe. For some of the history of American public housing programmes and the problems associated with their servicing only the lower classes, see Lawrence Friedman, 'Public Housing and the Poor: An Overview', *California Law Review*, 54 (1966), 642–69.

[4] Laws of NY, ch. 334 (1901).

[5] A review of some of the Tenement House Act history may be found in Lawrence Friedman and Michael J. Spector, 'Tenement House Legislation in Wisconsin: Reform and Reaction', *American Journal of Legal History*, 9 (1965), 41–63. The classic histories of the tenement reforms include Robert DeForest and Lawrence Veiller (eds.), *The Tenement House Problem* (New York, 1903); Lawrence Veiller, 'The Housing Problem in American Cities', *Annals of the American Academy of Political and Social Sciences*, 25 (1905), 248–72; Roy Lubove, *The Progressives and the Slums: Tenement House Reform in New York City 1890–1917* (Westport., Conn., 1962); Steven Andrachek, 'Housing in the United States: 1890–1929', in Gertrude Fish (ed.), *The Story of Housing* (New York, 1979), 123–76.

prerequisite to understanding the reforms of the Progressive Era. The arrival of speedy eviction remedies before the Civil War dramatically altered the shape of residential leaseholds. Second, some changes did occur in landlord–tenant law during the decades surrounding the turn of the twentieth century. The constructive eviction doctrine evolved to allow a few more tenants to leave their abodes without further obligation to pay their rent. Tort remedies also expanded, providing some relief in situations where tenants were injured by their landlords' failure to obey newly enacted building codes or tenement house acts. But none of these changes had any impact on the operation of the summary dispossess remedy. And, as already mentioned, Tenement House Acts began to appear near the end of the nineteenth century.

The final and most important part of the story involves the limited vision of the Progressive Era. A number of its reform societies, public service groups, and other organizations were anxious to improve the quality of urban life in America. Reviewing the history of these reform movements—describing their middle- and upper-class roots and commenting on their ethnic and racial biases—will impart a sense of the circumscribed imagination of the Progressive Era and help us understand why the reforms of that time left the summary dispossess process untouched and impoverished tenants without legal remedies.[6]

Summary dispossess statutes and early American landlord–tenant law

Nineteenth-century residential leasehold disputes commonly occurred in three situations. First, landlords sought to evict tenants who were living on the property but not paying rent. Second, landlords sued for unpaid rent from tenants who had given up possession of the property. And third, tenants who were injured while using rented property sometimes sued their landlords for damages.[7]

[6] Parts of this story, especially the use of speedy procedures against poor defendants, are remarkably similar to the tale told by Paul Johnson in 'Creditors, Debtors, and the Law in Victorian and Edwardian England', another essay in this volume.

[7] These same three situations still arise today, though they are now handled in somewhat different ways from a century ago. Despite all of the recent reforms, however, landlords are still usually able speedily to get rid of their non-paying tenants.

Most states handled all three situations according to a standard vision of American landlord–tenant law.[8] The vision rested upon an English tenurial notion that in return for authority to use land, a tenant agreed to pay rent, to maintain the land, and to return the land when the lease expired. It was a simple contract exchanging the right to possession for some form of payment in cash or kind. The landlord's obligations were fulfilled upon transfer of possession to the tenant. Once that transfer was complete, the tenant was obligated to pay the rent and return the land to the landlord at the termination of the lease. The standard leasehold was envisioned as giving almost complete control over the use of the rented property to the tenant for the length of the lease.[9] If the tenant vacated the land before the end of the lease, the obligation to pay rent, therefore, did not end. The landlord transferred the entire rental term and was under no obligation to take it back.[10] Similarly, if a tenant was injured while in possession of rented land, the landlord was not responsible. Tenants were obligated to keep the land safe for their own use and occupancy. And, of course, if the tenant did not pay rent, the landlord could reclaim possession.

The simplicity of this legal relationship was re-emphasized by nineteenth-century civil procedure in the United States. Procedural norms, also based in many ways on English precedents, were often as single minded as the standard lease. If someone had a legal problem, they filed a writ about that problem and litigated the issue. There were certain defences to each kind of writ, but merger of claims and parties, and the use of counter-claims, was

[8] For material on the 19th-century history of American residential landlord–tenant law, see John Humbach, 'The Common-Law Conception of Leasing: Mitigation, Habitability, and Dependence of Covenants', *Washington University Law Quarterly*, 60 (1983), 1213–90; Sarajane Love, 'Landlord's Remedies when the Tenant Abandons: Property, Contract and Leases', *Kansas Law Review*, 30 (1982), 533–70; Mary Ann Glendon, 'The Transformation of American Landlord–Tenant Law', *Boston College Law Review*, 23 (1982), 503–76; Richard Chused, 'Contemporary Dilemmas of the Javins Defense: A Note on the Need for Procedural Reform in Landlord–Tenant Law', *Georgetown Law Journal*, 67 (1979), 1385–403; Stephen Siegel, 'Is the Modern Lease a Contract of a Conveyance? A Historical Inquiry', *Journal of Urban Law*, 52 (1978), 649–87.

[9] In many ways this vision was false. If, for example, rent was paid in kind, the landlord might take large portions of the tenant's crops: The terms of the lease could easily leave a tenant as a virtual servant of the landlord.

[10] The common law rules went so far as to hold a tenant responsible for rent even after the building was destroyed by fire, storm, or other natural cause. That result was altered by statute in New York in 1860. Laws of NY, ch. 345 (13 Apr. 1860).

unknown.[11] Thus, when landlords sought to evict tenants for non-payment of rent, the tenant could not respond by asserting that the leased property was not good for farming. Or when tenants not in possession were sued for rent they had not paid before their departure from the land, they could not usually assert that they had left the premises after suffering an injury caused by the landlord's negligent behaviour.

Together the land lease and the writ system established a legal regime in which suits against tenants for either possession or unpaid rent were quite separate from each other and from suits for breaches of other contracts. If a written lease contained contractual terms on matters other than the possession for rent exchange of a standard rental, the additional contractual terms were not thought of as part of the lease. Disputes over these other contracts were handled separately from controversies over the lease. The lease was both substantively and procedurally independent of other contractual terms. Indeed, that independence of contracts (usually called 'covenants' in traditional cases) idea governed not only the law of leases but much of nineteenth-century contract law. Since different covenants in a lease were said to be independent, breach of one covenant could not be defended by claiming that the other side breached a different covenant. Thus a suit for unpaid rent was defendable only by a claim of accord and satisfaction (payment), constructive eviction (an action by the landlord so disturbing to the tenant's right to possess the property that the rent for land exchange was deemed void), or perhaps fraud in the inducement (fraud that induced the tenant to agree to a contract he would otherwise have eschewed).

For tenants, the most serious consequence of this vision of landlord–tenant law was the ability of landlords speedily to evict non-paying tenants. Indeed, American practice 'purified' the early English law by getting rid of many impediments to the eviction of defaulting tenants. Early in the nineteenth century, for example, New York landlords seeking possession of rented property

[11] Today, plaintiffs may join all their claims against the defendant in the same case and must join those arising out of the same facts. Defendants may respond to a plaintiff's case by asserting all available claims against the plaintiff. Claims arising out of the facts giving rise to the plaintiff's case must be asserted. In most cases, all the parties involved in the claims may be joined in the same case. This sort of wide-open litigation process was unknown for most of the 19th century. Serious reforms did not arise until the Federal Rules of Civil Procedure were adopted in 1938.

pursued ejectment claims modelled on a British statutory antecedent.[12] When rent was at least six months in arrears and the landlord had reserved in the lease a right to re-enter the property, the landlord could sue in ejectment for possession of the property. This version of the ejectment remedy arose in an agricultural world where many leases were in writing and most lasted for a term of years. Leasehold arrangements formed the backbone of much of early English property law and embodied a large set of cultural norms and interlocking chains of human relationships. In such a world it made sense to provide for a six-month waiting period before ejectment could occur. Removal of a tenant from the tenurial chain could cause a drastic change in social status and class. It served to protect not only the lower classes, but also those in the upper ranks of society who fell upon hard times.

This system could not last long in New York. By the early nineteenth century, New York City had a large number of residential tenants. Many of them were immigrants occupying apartments or houses under oral, periodic leases that could be terminated on a month's notice. Use of the ejectment process made it quite difficult to evict those tenants not paying their rent. Landlords using oral leases could not always prove they had reserved a right to re-enter the premises. The six-month grace period seemed too long in urban periodic tenancy cases. Evicting a tenant usually did not have major cultural repercussions. In 1820, the General Assembly rewrote the eviction statute, allowing a tenant to be summarily removed if he held over past the end of the term or defaulted in the payment of rent. This statute not only did away with the six-month waiting period, but shifted the proceedings to a different court for speedier action. In a rent default case, the landlord had to show that the rent was due, that he had reserved a right to re-enter the property, and that he had served a written demand for the rent at least three days before filing the judicial proceeding.[13]

In an 1840 report, the New York Senate claimed that the 1820 statute was motivated by two concerns:

[12] 4 Geo. II c. 28 (1731). For some of the early history, see *Michaels* v. *Fishel*, 169 NY 381, 62 NE 425 (1902).

[13] Laws of the State of New York, ch. 194, at 176 (13 Apr. 1820). At least one court decision also imposed a requirement that there be insufficient personal property available on the premises for distress (self-help seizure by the landlord) to satisfy the rent due. *Oakley* v. *Schoonmaker*, 15 NY [Wendell] 1226 (1837). It is not clear when this notion fell into disuse.

the difficulty of enforcing payment of rent in the city, which was likely to operate with great severity upon the poor, because it would drive lessors to exact security for rent indiscriminately; and 2d. The difficulty of obtaining possession of demised premises after the lease had expired.[14]

The second claim rings true. The earlier statute had left landlords seeking possession from holdover tenants to the sloth and technicalities of the ejectment proceeding. As New York City grew and the number of commercial and residential tenants increased, building owners' dissatisfaction with the tenant removal process grew. At some point landlords were going to demand and the legislature was going to create a speedier way of removing tenants who were overstaying their welcome. However, the claim by the 1840 authors of the Senate Report that the changes in nonpayment proceedings were designed to protect poor tenants is more difficult to understand. It may reflect an honest reconstruction of the General Assembly's motivations in 1820. It is not illogical to expect that landlords would seek larger security deposits from tenants if it was difficult to remove them when they failed to pay their rent. But the statements of sympathy for the poor may also have been generated by the bad times extant after the Panic of 1837, the starting point for one of the major economic downturns in America's history. Regardless of the 1840 report's accuracy, however, it was not surprising that fast-paced urban developments in New York City forced the legislature to repeal the six-month grace period in the ejectment law for those failing to pay their rent. Those owning leased buildings in the quickly growing environs of lower Manhattan Island were not going to sit on their hands while tenants occupied their premises rent free for long periods of time. Indeed, landlords drafted the 1820 Act and nursed it to passage.[15]

Save for the passage of a few minor amendments, the basic structure of the 1820 summary dispossess statute remained intact for approximately 150 years.[16] The paucity of amendments and the short-lived nature of the single ameliorative change adopted

[14] Documents of the Senate of New York, Report No. 65, at 9 (1840).

[15] Ibid.

[16] The summary dispossess statutes were routinely re-enacted each time the state legislature recodified New York law. See, e.g., 3 George Bliss, *The New York Civil Procedure Code as it is January 1st, 1895*, vol. iii at 2612–43 (1895). Significant changes in the summary dispossess process did not come until about 1970 when state courts all over the nation began

in the nineteenth century attests to the widespread assumption that speedy evictions were needed to ensure the development of New York City. The single change involved the adoption in 1840 of an amendment banning use of the summary process against any tenant with more than five years left to run on a lease.[17] Some business interests complained that it was unfair summarily to evict tenants occupying premises under long-term leases for failure to pay small amounts of rent after they had made significant capital improvements. The bad economic times following the Panic of 1837 generated sympathy for their position. Indeed, a great deal of debtor protection legislation was enacted all over the United States during the 1840s.[18] Protection of long-term, mostly commercial tenants fit neatly into that mould.[19]

Enactment of this change did not occur without controversy. Landlords lobbied against the reforms, complaining that they should not be forced to bear the economic losses of their tenants. The state Senate, in rebuffing such claims, commented:

It is worthy of remark that the English statutes, from which our statutes on this subject were substantially derived, were devised and enacted by a legislative body in which the tenantry of the country had almost literally no representation. In the House of Peers, the whole body were landlords, and in the House of Commons, the landed interest greatly predominated over all others; and having thus the legislative power, this favored class would naturally omit nothing, in making laws so nearly affecting its own interests. Yet in our legislation we have apparently gone far beyond the English law in providing remedies for landlords.[20]

to allow tenants to raise certain defences in summary dispossess proceedings if there were health and safety code violations in their apartments. The most famous of these cases is *Javins v. First National Realty Corp.*, 428 F. 2d 1071 (1970). *Javins* began to be followed in New York almost immediately. See, e.g., *Amanuensis, Ltd. v. Brown*, 318 NYS 2d 311, 65 Misc. 2d 15 (1971); *Steinberg v. Carreras*, 344 NYS 2d 136, 74 Misc. 2d 32 (1973).

[17] Laws of New York, ch. 162, at 119 (25 Apr. 1840).

[18] Bankruptcy legislation, foreclosure regulations, exemptions of certain sorts of property from attachment by creditors, abolition of imprisonment for debt, and Married Women's Property Acts were the most common sorts of enactments. See Richard Chused, 'Married Women's Property Law: 1800–1850', *Georgetown Law Journal*, 71 (1983), 1359–425, at 1402–4; Peter J. Coleman, *Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607–1900* (Madison, 1974).

[19] The structure of landlord–tenant law was the subject of debate at the New York State Constitutional Convention in 1846 and in several sessions of the state legislature during the 1840s. The high point of tenant-oriented reform measures in the period was the abolition of the remedy of distress for rents in 1846. Laws of NY, ch. 274 (1846).

[20] Report No. 65, n. 14 above, at 11.

Legislative sympathy for tenants did not last long. When the summary dispossess statute was re-enacted in 1849 during better economic times, the requirement that landlords use the old ejectment procedure for getting rid of long-term tenants was removed.[21]

Later amendments only added to the list of settings in which the summary process could be used. Getting rid of bawdy houses after soldiers returned home from the Civil War was the object of the legislation adopted in 1868.[22] Five years later, the summary dispossess process was made available to evict lessees using a premises for any 'illegal trade, manufacture or other business'.[23] This provision was rarely used.[24] Indeed, tenement houses were teeming with sweat shops and small industrial establishments by the end of the century. Licensing schemes were established in a weak attempt to control them. Not until the Triangle Shirt Waist factory fire in 1911 did New York begin seriously to attack the unsafe working conditions of many labouring in the tenements and lofts of New York.

New York was far from alone in establishing speedy eviction procedures during the nineteenth century. While it was the first state to enact a summary dispossess remedy, states commonly adopted such schemes.[25] Indeed, adoption of summary dispossess statutes fit nicely into the American vision of landlord–tenant law in the nineteenth century. The speedy process met the need for a particular form of relief for landlords and was naturally separate from other claims that tenants might have against their landlords. In a simple, formalistic legal world this all made some sense. It allowed landlords to use oral, month-to-month leases without seriously disturbing the ability of landlords to rid themselves of unwanted tenants. The investment and speculative aims of landlords were easily protected. There was no need for

[21] Laws of NY, ch. 193, at 291 (3 Apr. 1849).

[22] Ibid., ch. 764, at 1724 (9 May 1868).

[23] Ibid., ch. 583, at 895 (22 May 1873).

[24] There is only one reported case on the provision. It held that the summary process was available only when the illegal activity was actually occurring. Once the illegal activity ceased, the landlord was left to pursue ejectment. *Shaw* v. *McCarty*, 63 How. Prac. 286 (Com. Pleas 1882).

[25] Many states adopted summary eviction remedies prior to 1850. Ohio enacted a statute in 1831, followed by Georgia in 1833, Massachusetts in 1841, Tennessee in 1842, Indiana in 1843, Illinois in 1845, Michigan in 1846, Texas in 1848, and California in 1850. The best summary of the 20th-century statutes may be found in American Law Institute, *Restatement (Second) of Property* (Philadelphia, 1977), §12.1, Statutory Note, at pp. 399–406.

tenement house owners to rely upon onerous contractual terms, like those used in Germany,[26] to control the use of their land.

Reform and the Progressive Era

One might expect that in an industrial nation full of ghastly urban problems, this standard, formalized vision of landlord–tenant law would fall apart, that development of large-scale urban reform movements during the Progressive Era would lead to the creation of legal fora more sympathetic to the needs of those living in tenement houses and apartments. This did not happen. The first clue that landlord–tenant courts were going to be relatively immune from change appeared in the 1840s in New York with the adoption of procedural reforms in the Field Code. The Field Codes were the first attempt to remove some of the writ system's baggage, to simplify pleading by allowing multiple claims and parties in the same case.[27] But these civil procedure reforms had no impact on summary dispossess proceedings. Indeed, summary dispossess statutes proliferated around the country while Field Codes were being adopted. The legal system did not find it anomalous that an array of defences and counter-claims were available in virtually every procedural context except summary dispossess courts until the 1960s.

The first major changes in the nineteenth-century American vision of landlord–tenant law were generated by enactment of housing and building codes in New York. Major tenement house laws were adopted in 1894 and 1901. Other changes followed, as scandals erupted over lack of maintenance of tenements by

[26] Cf. the essay by Tilman Repgen in this volume.

[27] For more on the Field Codes, see Robert Bone, 'Mapping the Boundaries of a Dispute: Conceptions of Ideal Lawsuit Structure from the Field Code to the Federal Rules', *Columbia Law Review*, 89 (1989), 1–118; Stephen Subrin, 'David Dudley Field and the Field Code: A Historical Analysis of an Earlier Procedural Vision', *Law and History Review*, 6 (1988), 311–73. Many judges resisted the reforms of the Field Codes, insisting that pleadings read much like the old writs to pass muster. Earth-shaking procedural change did not occur in the United States until the Federal Rules of Civil Procedure were promulgated in 1938 and then copied by many state court systems. Those reforms clearly allowed multiple claims and parties, set up fairly simple rules for the filing of counter-claims, and began the final dissolution of separate courts of law and equity in most states.

famous persons and religious organizations,[28] fires killed people in their apartments and in sweat shops buried in the tenement districts, and rent strikes popped up in the slums.[29] Jacob Riis published his famous muckraking book *How the Other Half Lives* in 1890. The General Assembly's Tenement House Committee produced a massive report during the 1895 session of the state legislature, describing in detail the conditions in tenement houses and exploring the ownership of large numbers of tenement houses by the Trinity Church.[30] For the most part enforcement of the new standards was accomplished by setting up bureaucracies and establishing criminal penalties for violations of new codes, not by making changes in the summary dispossess proceeding or in other areas of landlord–tenant law. But two areas of landlord–tenant law—tort liability of landlords and constructive eviction law—were significantly influenced by the burgeoning Progressive Era reforms.

As the legislatures in New York state and New York City began to adopt housing and building codes after the turn of the twentieth century, courts used the new codes as a basis for redefining the duties owed by landlords to their tenants who were injured on the premises. By 1925, injured tenants were no longer limited to recovery only in cases where the common areas, like hallways, were dangerous.[31] The courts referred to the new building and housing codes as sources of law for defining the contours of landlord responsibility.[32] The change in approach was quite gradual.

[28] In 1894 a scandal broke when it was revealed that the Trinity Church Corporation owned a number of rental buildings that were in deplorable condition. See, e.g., 'Old Trinity Shanties', *New York Times* (15 Dec. 1894), one of a series of articles about the controversy.

[29] There was a significant surge of rent strikes in 1904 in response to widespread rent increases. See, e.g., Archibald Hill, 'The Rental Agitation on the East Side', *Charities Review*, 12 (16 Apr. 1904), 396–8.

[30] Report of the Tenement House Committee, NY Assembly Documents, 18th Sess., No. 37 (1895).

[31] Under the standard American vision of landlord–tenant law, landlords were not responsible for injuries occurring on property rented by tenants. But in apartment buildings, tenants rented only their own living quarters. Common areas, like hallways, were under the control of landlords. Even before the Progressive Era, the courts had ruled that landlords were responsible for defects in common areas. Otherwise, landlords were no more responsible to tenants for defects in their apartments than sellers of real property were to their buyers. *Jaffe* v. *Harteau*, 56 NY 398 (1874); *Schwartz* v. *Apple*, 48 NYS 253 (1897).

[32] The first cases indicating a change in rules involved falls in hallways because of bad lighting. Although the falls were in common areas and therefore could have been decided by recourse to standard common law rules, the courts looked to the tenement house legislation as a source of law for defining the landlord's duty of care. *Ziegler* v. *Brennan*,

It was not applied in a case involving injuries inside a tenant's apartment until 1922.[33] These changes, however, did not have much of an impact on the day-to-day life of most tenants. Cases with damages that were large enough to make it worth a lawyer's time to take on the dispute were not common.[34] And the redefinitions of landlords' duty of care to tenants for tort purposes did not translate into any limitations on the landlord's right summarily to dispossess a tenant not paying rent.

At about the same time as these tort decisions began to appear, contract law was undergoing some significant changes, particularly in commercial transactions. The New York Court of Appeals rendered a famous series of opinions in the early twentieth century affirming the validity of a variety of commercial contracts and treating them as unified deals with dependent, rather than independent, covenants. The court helped restructure remedy theories to account for the multiplicity of ways in which such unified contracts might be breached and recognized the importance of commercial customs and expectations in the development of contract law.[35]

But the law of residential leases did not respond in the same way. The idea of independent covenants continued influencing landlord–tenant law long after it was dead in the rest of contract law. The only modification that occurred was a slight easing in the strictures of constructive eviction law. In the early

78 NYS 342 (1902); *Gillick* v. *Jackson*, 83 NYS 29 (1903); *Bornstein* v. *Faden*, 133 NYS 608 (1912).

[33] Under the old rules, a ceiling collapse inside an apartment did not provide the basis for tort liability. *Schwartz* v. *Apple*, 48 NYS 253 (1897); *Kushes* v. *Ginsburg*, 91 NYS 216 (1904). That rule was changed in a famous opinion written by Judge Benjamin Cardozo in *Altz* v. *Leiberson*, 233 NY 16 (1922). *Altz* was also a fallen ceiling case.

[34] Lawyers handling tort cases worked then, as they do now, on a contingency fee basis. If they won the case, they got a share of the proceeds. If they lost, they went away empty handed. It therefore was unlikely that a lawyer would take a case that involved only a small amount of damages. Lawyers taking eviction cases were paid on an hourly rather than contingent fee basis. It obviously was difficult for tenants sued for possession to pay lawyers. Only with the advent of legal service programmes for the poor in the 1960s did tenants begin to show up in landlord–tenant courts with lawyers. Today, many tenants are represented by law students given the right to handle certain sorts of cases under the supervision of a member of the bar.

[35] See, e.g., two famous opinions by Justice Benjamin Cardozo: *Wood* v. *Lucy, Lady Duff-Gordon*, 222 NY 88, 118 NE 214 (1917); *Sun Printing and Publishing Ass'n* v. *Remington Paper and Power Co., Inc.*, 235 NY 338, 139 N.E. 470 (1923). For commentary, see Arthur Corbin, 'Mr. Justice Cardozo and the Law of Contracts', *Columbia Law Review*, 39 (1939), 56–87; Walter Pratt, 'Contract Law at the Turn of the Century', *South Carolina Law Review*, 39 (1988), 415–64.

cases, a tenant moving out of an apartment could use the constructive eviction defence in an action for unpaid rent brought by a landlord only if the tenant's departure was justified by an intentional act of the landlord depriving the tenant of possession.[36] Late in the nineteenth century, health and safety code requirements began to have an impact on constructive eviction rules.

The narrow quality of the changes made in constructive eviction law is demonstrated by some of the early cases involving faulty plumbing systems that allowed sewer gas to seep into apartments.[37] In a couple of cases decided in the 1890s, the New York Court of Appeals eased constructive eviction rules to a less subjective standard.[38] Rather than looking to the nature of the landlord's intent or actions, the courts began to pay attention to the practical difficulties of using a place for its intended purpose. Even with the eased rules, however, constructive eviction was a risky adventure for tenants. If they guessed wrong and moved out without paying the landlord, they were stuck with a rent obligation. If they guessed wrong and stayed, they had to use and pay for an inadequate apartment. Furthermore, most tenants sued for rent lost even after constructive eviction rules were changed. It was still difficult for tenants to prove that they had moved out because the premises were uninhabitable.[39] Landlord violations of new public health and safety codes that did not render an apartment unlivable provided no basis for tenant relief when a landlord sued for rent. Nor did claims that landlords had breached an express promise to make repairs. The action for rent still was said

[36] *Edgerton* v. *Page*, 14 How. Prac. 116 (1856). Fraud, in addition to an actual ouster, might provide the necessary intentional action. *Wallace* v. *Lent*, 29 How. Prac. 289 (1865). In one case ouster was found after the landlord turned off the water supply. *West Side Savings Bank* v. *Newton*, 57 How. Prac. 152 (Ct. App. 1879). But damp conditions, vermin, or noxious smells did not suffice. *Truesdell* v. *Booth*, 4 Hun. 100 (1875).

[37] The first breakthrough case involved a public health order to clear out sewer gas. The tenants successfully claimed constructive eviction when they moved out and were sued for rent. *Bradley* v. *Nestor*, 67 How. Prac. 76 (Com. Pleas 1884). See also *Thalheimer* v. *Lempert*, 1 NYS 470 (1888). There were also cases going the other way. *Franklin* v. *Brown*, 118 NY 110 (1889); *Dexter* v. *King*, 8 NYS 489 (1890).

[38] *Tallman* v. *Murphy*, 120 NY 345, 24 NE 716 (1890); *Sully* v. *Schmitt*, 147 NY 248 (1895). Lower court opinions then took over, gradually extending constructive eviction rules to include services like heating, sewers, and water.

[39] For an early case refusing to find a constructive eviction even though the landlord was under Health Department orders to fix the sewer system, see *Dexter* v. *King*, 8 NYS 489 (1890). In a later case, *Sherman* v. *Ludin*, 79 App. Div. 37 (1903), the tenant lost a constructive eviction claim because the defects in the apartment existed and were known to the tenant when he moved in. That sort of result renders the defence useless in most cases.

to involve a covenant independent of any other covenant a tenant might have with the landlord. Tenants were relegated to bringing a separate case if the landlord breached a clause in the lease unrelated to the exchange of possession for rent.

And, of course, none of these changes was of any use in the summary dispossess context. Because tenants in dispossess actions had not moved out, constructive eviction was not helpful.[40] The changes in public health and safety standards did not lead to the creation of any new defences for tenants seeking to avoid eviction in a summary dispossess case. Even if they had a separate contract case against their landlord for breaking some promise, those issues could not be raised in the possession action. They might eventually win such a separate action, but the outcome of the dispossess case would long since have put them on the street. And that of course is the dilemma. Why did reform of rent and possession law lag so far behind change in other areas, such as tort law and basic contract law? Why could tenants not claim that landlords had a duty to make repairs and that if they breached that duty, raise that breach defensively in a dispossess action? Why were landlords running tenement houses in violation of public health and safety codes given routine access to the summary dispossess remedy?

The Progressive Era reformers

The Charity Organization Society (COS) of the City of New York published its Fifteenth Annual Report in 1897. On the front cover of that report, the editors inserted two slogans.

> We have no right to make our alms a temptation to the poor; and it is a dangerous, though easy, thing to teach a man that he can live without work.
>
> To put one family beyond the need of charity is more useful than to tide twenty over into next week's misery.

These two little aphorisms betray a deep sense that charity must be carefully bestowed, that only the worthy poor deserve assistance, and that most of the lower classes are lazy and undeserv-

[40] By definition, constructive eviction was a defence to an action for rent brought against a tenant not in possession.

ing. These sentiments became quite overt in the body of an article in the 1897 Report of the Society, authored by Harold Kelsey Estabrook, the Special Agent on an Investigation of Dispossessed Tenants. Estabrook used the summary dispossess courts as a source for finding charity clients and got deeply involved in the way the judges decided how much time to give tenants to pay their rent before they could be evicted. He bragged that the court normally took quite seriously the recommendation of the COS as to whether the tenants should be given as much as five days to pay the rent before they were thrown out. Despite this narrow legal context—whether to evict after zero or up to five days—Estabrook was perfectly prepared to make stark judgements about whether tenants deserved a smidgen of extra time. And he never claimed that tenants' rental obligations should be reduced or eliminated when landlords violated state or city housing codes.

He wrote:

> I am not ready to urge landlords in general to be either more strict or more lenient; for, though only from 30 per cent. to 40 per cent. of the families investigated were in need of either relief or time, and though probably not more than 10 per cent. more of them were doing all they should to pay their rent, yet the dispossessed tenants—we must always remember—belong, most of them, to a lower class—a less honest and less energetic class—than most tenants who never or very seldom are dispossessed. For the good of landlords and tenants alike, more than half of those dispossessed probably should have been dispossessed more promptly; but of tenants not dispossessed, I believe that many more than half are doing all they can to pay their rent promptly, and should not be dispossessed. Often I would urge a landlord to be more strict—as, for example, when he allows a young couple, both able to work but often drinking, to live six months in his house after paying only one month's rent, and then dispossesses them because they quarrel with the housekeeper; but, often, too, I would urge a landlord to be more lenient, as when he dispossesses a family of whom no one is working and some are ill, and who have paid rent to him regularly for eight years until this month.[41]

Estabrook's sense that 'dispossessed tenants . . . belong . . . to a lower class—a less honest and less energetic class—than most

[41] Harold Kelsey Estabrook, 'Report of the Special Agent on an Investigation of Dispossessed Tenants', in *15th Annual Report, Charity Organization Society of the City of New York* (New York, 1897), 44–53, at 51.

tenants' was certainly not unusual in late nineteenth-century America.[42] While the idea that only the worthy poor deserved either welfare or charity had been around since the days of the English and colonial American Poor Laws, many in the middle and upper classes, including many claiming to be reformers, developed particularly virulent attitudes about lower-class persons in the post-Civil War United States.

Attitudes about race and ethnicity played central roles in framing the Progressive Era culture. Whatever optimism might have existed right after the Civil War that freed slaves could be quickly integrated into the general culture had totally dissipated by the turn of the century. Indeed, racism was boldly proclaimed as appropriate in many quarters. The Jim Crow system of segregation was in full flower.[43] The Ku-Klux-Klan was a powerful political movement; lynching reached its high point in this era.[44] Restrictive covenant schemes blossomed in the first two decades of the twentieth century, barring sale or rental of housing to African Americans in many areas.[45] Even the women's suffrage movement adopted a strategy that agitated for the vote while implicitly, and in some cases explicitly, supporting a variety of schemes to bar voting by minority persons of either gender.[46]

Racial and class animosities were certainly not new features of American culture that emerged suddenly after the Civil War. But a number of factors brought attitudes about ethnicity and poverty to a fever pitch during the Progressive Era. Shifts in scientific, cultural, and legal understandings merged with demographic factors, including emancipation of the slaves and their entry into the employment market, huge waves of immigration, and movement

[42] Another example of this sentiment appeared in an article by Dr Arnold Eilvart, 'An Attempt to Give Justice', *Charities Review*, 3 (1894), 343–51. This is ostensibly a much more radical article than Estabrook's. Eilvart came from a union background and was urging that tenants organize into groups to pursue remedies with housing authorities. Although he believed that tenants were educable, he ascribed the problems in tenement houses to three causes—the rapacity and indolence of landlords, the neglect of officials, and 'the selfishness of dirty tenants'.

[43] See the classic book, C. Vann Woodward, *The Strange Career of Jim Crow* (New York, 1966).

[44] See Jacquelyn Dowd Hall, *Revolt against Chivalry: Jessie Daniel Ames and the Campaign against Lynching* (New York, 1979).

[45] See Garrett Power, 'Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910–1913', *Maryland Law Review*, 42 (1982), 289–328; Clement Vose, *Caucasians Only: The Supreme Court, the NAACP, and the Restrictive Covenant Cases* (New York, 1959).

[46] Sara Evans, *Born for Liberty: A History of Women in America* (New York, 1989), 152–6.

of people to cities, to create fear and consternation among large segments of the native-born white population. Those fears made it impossible for many reformers to see the 'clients' of the summary dispossess court as worthy of sympathy and understanding.

Darwinism provided a convenient intellectual cover for American domestic racism. It had enormous influence on American culture. Trust in scientific progress was a byword of the time. Advances in public health and the development of electricity, telegraphs, telephones, pumped water plumbing and sewer systems, photography, sound recordings, and automobiles created great faith in the possibilities of human ingenuity. When Darwinism arrived as scientific truth, it confirmed in the minds of many that native-born white Americans came from superior stock. The widespread acceptance of evolutionary theory allowed for easy categorization of people as higher or lower on the development ladder.

In such an environment many immigrants arriving during the Progressive Era were criticized as unworthies. Though thirst for industrial labour drew millions to American shores, desperate attempts were made to ban entry of unworthy men and women. What was wanted was families. Relying on family solidarity, many thought, was the only way to stem the immigrant tide of male miscreants and female prostitutes pouring onto American shores.[47] By the 1920s, immigrants from some nations were wanted more than from others. Large numbers of Germans or other northern Europeans were welcomed, while entry of disfavoured groups like Italians and Jews was restrained. Estabrook's statement that 'dispossessed tenants . . . belong . . . to a lower class—a less honest and less energetic class—than most tenants' was standard fare. Indeed it was a relatively mild form of ethnic divisiveness when compared to the statements of non-progressives like those belonging to the Ku-Klux-Klan or lynching African Americans on false charges of raping white women. Sentiments like those of Estabrook allowed little room for empathy with the plight of impoverished tenement house occupants. Landlord–tenant court reform was simply not on the agenda of charity workers willing to condemn their own clientele.

[47] Kitty Calavita, *U.S. Immigration Law and the Control of Labor: 1820–1924* (London, 1984); Rina Kalola, 'Immigration Laws and Immigrant Women: 1885–1924' (1996) (student paper on file with author).

Estabrook's casework approach to the salvation of those impoverished families competent enough to escape moral decay did not speak for the entire Progressive movement. Indeed, Edward Devine, a Professor of Social Economy and secretary of the New York Charity Organization Society from 1896 to 1912, produced a stream of works contesting the Society's preoccupation with the links between personal immorality and poverty. As Paul Boyer noted some time ago, Devine dismissed as a 'halfway explanation' the belief that immorality caused poverty, even though such notions were 'thoroughly interwoven into a vast quantity of literature and into almost the whole of our charitable tradition'. Boyer wrote:

> The causes of destitution, he [Devine] declared, were 'economic, social, transitional, measurable, [and] manageable'; the urban vice and immorality that so distressed middle-class social workers were 'more largely the results of social environment than of defective character.' Charity organizations, he concluded firmly, should shift from 'arbitrary and artificial' efforts at individual uplift to a broader program of environmental change.[48]

Positive environmentalism—the idea that changing surroundings will change behaviour—dominated a significant segment of the Progressive reform community. Followers eschewed the worst excesses of the Progressive moralists and Darwinian racists. They looked for guidance to those scientific advances in public health, sanitation, and social science that supported the ability of any group of persons to make moral progress when living in supportive and healthy surroundings. This movement was especially influential in the housing and architectural worlds. Those supporting tenement house reforms believed strongly that better access to air and light would improve both the physical and moral health of the occupants. Their reports were filled with data on disease and death rates in various sorts of housing environments. The City Beautiful Movement in the architectural world grew out of a similar belief structure. Based in significant ways on the work of Frederick Law Olmstead, who designed Central Park in the 1850s, architects began to structure housing complexes as part of a larger ecological whole. In a somewhat romantic effort to recapture memories of a more bucolic and morally pure rural past, site

[48] Paul Boyer, *Urban Masses and Moral Order in America, 1820–1920* (Cambridge, Mass., 1978), at 69–70.

planning and landscape architecture became important parts of urban planning. In 1878, the journal *Plumber and Sanitary Engineer* announced a competition for a model tenement design. The contest drew wide publicity and a number of entries. Many of the ideas suggested in this contest were later codified in Tenement House Acts.[49] And, of course, the zoning movement was heavily influenced by the positive environmental movement of the early twentieth century. New York City adopted the nation's first zoning ordinance in 1916.

Though ostensibly less hostile to immigrants and African Americans, the positive environmentalists were no more interested in landlord–tenant courts than the more punitive, Darwinian sectors of the Progressive community. Their movement fought against family-by-family assistance programmes, searching instead for ways to alter the contours of the larger urban environment. Major legislative initiatives, public health campaigns, water and sewer construction programmes, revision of architectural practices, adoption of health, building and fire codes, and enactment of zoning schemes made up their agenda. Their concern for physical and moral improvements was motivated as much by a desire to protect middle-class notions of polite urbanity as it was by any charitable instincts toward the less well-off. Native-born whites were attracted to Tenement House Acts designed to reduce disease and crime in cities. Zoning, perhaps the crowning achievement of the positive environmentalists, made sense to otherwise conservative Americans because it allowed government to protect middle-class residential neighbourhoods from encroachment by 'disfavored' uses.[50]

The legal culture of the time was as divided as the broader Progressive community. It was an epoch in which debates between conservative, classical legal theorists and reform-minded realists were in full flower. Despite the vigour of the jurisprudential debates, landlord–tenant courts were not of concern to either side. Classical legal theory found a home in late nineteenth-century

[49] Lubove, *Progressives and the Slums*, at 28–32.

[50] It is difficult to understand why the quite conservative Supreme Court of the 1920s approved zoning, see *Village of Euclid* v. *Ambler Realty Co.*, 272 US 365 (1926), in an opinion written by Justice Sutherland, later an arch-enemy of the New Deal, without knowing that zoning was pushed by the Hoover administration, widely approved by middle-class community groups, and framed in ways that guaranteed the protection of well-heeled residential communities.

American legal culture. The post-Civil War debates over the status of freed slaves gave new credence to the importance of contract theory. The right of African Americans to contract for their labour made the market a central part of the post-war meaning of 'liberty'. Industrialists used the same language for their own free market purposes, urging that freedom of contract was a necessary feature of the capitalist age.[51]

Adherents of classical legal theory, in its purist form, opined that law was a science, that legal rules could be derived from a few universal principles. They argued that it was impossible to find a definition of the public good that all could agree to. The best way to ensure that each person would be able to obtain his own vision of the good was to prevent government from interfering with private ordering. The purpose of the law was fairly straightforward: to protect private property and contract from interference by government authority. The result was a ruthless form of equality. Of necessity, all men had the right to contract freely. Each was in that sense a juridical equal. There was no sympathy for class distinctions, poverty, or language difficulties. Those who fell by the wayside were either inferior beings or responsible for their own plight. In theory any tenant could write clauses into leases to make various covenants dependent rather than independent or to create certain tenant rights if landlords failed to make repairs. The routine failure of tenants to do so was simply part of the free market. In this view, landlord–tenant courts were the highest form of social ordering. The failure of tenants to pay their rent only meant that the courts' primary obligation was to insure that the leasehold contracts were enforced. Classical legal theorists had no more interest in allowing tenants to defend eviction actions than they did in allowing legislatures to regulate the content of the labour contract.[52] Their approach to legal issues and widespread influence in late nineteenth- and early twentieth-century legal circles represented a high water mark for the importance of contracts and markets in the defining of legal obligations.[53]

[51] A nice example of this sort of rhetoric may be found in William Howard Taft, 'The Right of Private Property', *Michigan Law Journal*, 3 (1894), 215–33. For some history of classical legal thought, see Thomas Grey, 'Langdell's Orthodoxy', *University of Pittsburgh Law Review*, 45 (1983), 1–53.

[52] See, e.g., *Lochner* v. *New York*, 198 US 45 (1905); *Adkins* v. *Children's Hospital*, 261 US 525 (1923).

[53] For more on classical legal theory, see Gary Peller, 'The Metaphysics of American Law', *California Law Review*, 73 (1985), 1151–290, at 1191–219; Grey, 'Langdell's Orthodoxy'.

But what about the Realists? Why did they not take up the summary dispossess issue? They were highly critical of the classical notion that law could be derived from a small set of universally agreed-upon principles. Law was a political, not a scientific undertaking. Property and contract law were not the province of private preference, but the by-product of public policy-making. Courts should not be protectors of private preferences, but administrators of legislative will and purveyors of fairness. Their job was not to impose a certain vision of economic power upon the body politic, but to allow legislatures to resolve important public questions.

The early Realists[54] were much like the positive environmentalists. They too looked to the social sciences for guidance. Their goal was to restructure the economy of the nation, especially the labour market. The Realists, like the positive environmentalists, had a bias towards legislative action.[55] That bias arose out of hostility to classical judges who invalidated a large number of state reform initiatives, as well as a belief that broad legislative change was the best hope for the nation. It was possible, the Realists thought, to change the environment in which people lived and worked. Indeed, it was necessary to change that environment in order to improve the quality of life for most people. And so the Realists, along with many Progressives, supported minimum wages laws, restrictions on child labour, protective labour legislation, union organizing, tenement house reforms, and zoning laws.

Roscoe Pound, for example, wrote one of the earliest Realist critiques of classical legal contract theory during the tenement house era.[56] He described his concerns with invalidation of labour legislation by classical jurists, blaming the rise of classical legal

[54] For a summary of the Realist movement, see Joseph Singer, 'Legal Realism Now', *California Law Review*, 76 (1988), 465–544; Note, 'Formalist and Instrumentalist Legal Reasoning and Legal Theory', *California Law Review*, 73 (1985), 119–57.

[55] Realists, of course, were eventually appointed to the bench. Some of them, such as Justice Cardozo, engaged in significant reforms of the common law. But the larger goal, not fully accomplished until the New Deal era, was to give legislative reformers room to operate.

[56] Roscoe Pound, 'Liberty of Contract', *Yale LJ* 18 (1909), 454–87. Many of the themes taken up by Pound became the focus of work by later well-known Realists. See, for example, Robert Hale, 'Bargaining, Duress, and Economic Liberty', *Columbia Law Review*, 43 (1943), 603–28; Morris Cohen, 'The Basis of Contract', *Harvard Law Review*, 46 (1933), 553–92; Robert Hale, 'Coercion and Distribution in a Supposedly Non-coercive State', *Political Science Quarterly*, 38 (1923), 470–94.

thought on individualistic conceptions of justice that exaggerated the importance of property and contract, the training of judges and lawyers in eighteenth-century legal philosophy and natural law theory, and reliance on theories of general application instead of realistic concern for the situations and facts underlying the adoption of remedial statutes. Pound complained that the courts were bent on barring the legislature from 'bringing about any real equality in labor-bargainings, even though thereby strikes and disorders may be obviated'.[57] His focus, like that of most Realists, was on the labour market. And his cure was to allow legislatures to investigate the facts and enact new workplace regulations.

In hindsight, it is not surprising that eviction courts did not garner much Realist attention. Both the emancipation of the slaves and the rise of larg-scale industrial production after the Civil War made the workplace the central focus of attention for politicians, economists, and lawyers. Since use of public funds to construct decent housing was unthinkable in late nineteenth-century America, the underlying problems in the housing market were unlikely to be altered without increasing the wealth of tenement house occupants. Labour market reform, adoption of minimum wage laws, and support for unions was therefore a high priority. The most that could be done in housing was to fix some of the more egregious health problems and protect middle- and upper-class neighbourhoods from the depredations of urban blight. The focus of reformers on tenement house construction, parks, and zoning was the logical result.

Finally, the Realists, like most of the rest of the body politic, were affected by ethnic and racial attitudes. Although the structure of Realist beliefs certainly led them to focus on large-scale legislative initiatives, they, like many Progressives, were heavily influenced by the routine racism and nativism of the day.[58] Zoning schemes, for example, were routinely framed as ways of protecting the livability of neighbourhoods full of single family housing. Tenement houses were often described as potential nuisances to less dense residential communities. Indeed that nuisance rationale formed the backbone of Justice Sutherland's opinion in *Village*

[57] Pound, 'Liberty of Contract', at 481.

[58] Who, for example, can forget Justice Holmes's famous statement that three generations of imbeciles are enough in *Buck* v. *Bell*, 274 US 200 (1927)?

of Euclid v. *Ambler Realty Company*,[59] the Supreme Court decision affirming the constitutionality of zoning.

Epilogue

There is reason to believe that the sea change in racial attitudes between the 1920s and the Vietnam War era had much to do with the eventual reform of landlord–tenant courts and eviction law in the 1960s and 1970s. These recent reforms occurred during an unusual moment in American history. International criticism of segregation by newly independent third world nations and the emergence of a number of charismatic leaders in the African American community set the stage for the civil rights era. The post-Second World War economic boom in the United States generated both very high expectations that all Americans could be successful and reduction in fear among lower-class whites that ending segregation would also end their employment. Many whites came to believe that the time for segregation had passed. The result was the creation of a powerful coalition of forces—intellectuals, labour unions, civil rights groups, many important political organizations, and a number of businesses—interested in the problems of race and poverty. Ironically this high water mark of concern about remedying racial injustice arose at the very time that poverty was a less significant problem than it had been during any other moment in American history.[60] The plight of those in the underclass became highly visible while most of the nation basked in economic security.

The result was a wave of programmes to end poverty—welfare reforms, housing construction programmes, subsidies for organizing indigenous community groups, legal services for the poor, urban renewal, and a host of other programmes. This reform movement viewed impoverishment not as a flaw, but as a problem. Believers claimed money was available in both the government and private sectors to relieve the suffering of the poor. This movement did not limit itself to large-scale structural changes wrought by legislative action. It reached down into poor communities

[59] 272 US 365 (1926).

[60] See, e.g., Edward Rabin, 'The Revolution in Residential Landlord–Tenant Law: Causes and Consequences', *Cornell Law Review*, 69 (1984), 517–84.

themselves, urged agitation, and noticed the contradictions inherent in landlords being able easily to get rid of tenants living in substandard buildings. It was, in short, a moment in which the poor were not blamed for their own impoverishment and race was not a total barrier to the creation of coalitions among groups in the lower class. Those three factors—a glance at racial understanding, a momentary empathy with the poor among many in the middle and upper classes, and a window in which alliances among lower-class white and African American groups were possible—made reform of landlord–tenant courts possible in the 1960s and 1970s. The absence of these factors among Progressive reformers had made the same reforms impossible at the beginning of the twentieth century.